



Zoning Enforcement Officer

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INTERDEPARTMENTAL COMMUNICATION (REVISED)

To: Steve Ledoux, Town Manager
Board of Selectmen

Date: **May 15, 2013**
~~April 17, 2013~~

From: Scott A. Mutch, Zoning Enforcement Officer & Assistant Town Planner

Subject: Site Plan Special Permit Application #03/05/13-441 (Gowing)
USE Special Permit for Restaurant in excess of 10 seats
252 Main Street, Panera, LLC. c/o Jennifer A. Richter

Location:	252 Main Street, Acton, MA
Applicant:	Panera, LLC. c/o Jennifer A. Richter, 3630 South Geyer Road, Suite 100, Saint Louis, Missouri 63127
Owner:	The Stop and Shop Supermarket Company, LLC., 1385 Hancock Street, Quincy, Massachusetts 02169
Engineer:	Core States Group, 179 Sidney Street, Cambridge, MA 02139
Architect:	Arc Vision, Inc., 1950 Craig Road, Suite 300, St. Louis, MO 63146
Previous Site Plans:	#01/02/73-0055: Construct New McDonald's Restaurant #01/30/75-0096: Construct General Retail Use Building #03/13/81-0204: Construct McDonaldland Park #02/09/82-0215: Construct Playland Addition to Existing McDonald's Rest. #11/07/94-0348: Construct 800 ft ² Addition to Existing McDonald's
Previous BOA Hearings:	#75-19: Petition for Review – Denied #98-14: Variance for Signage – Denied #80-6: Variance to Construct New Entrance/Vestibule
Zoning:	Kelley's Corner (KC) Groundwater Protection District Zone 4
Proposed Uses:	Restaurant – Panera Bread Company
Map/Parcel:	F-3/116, 129-1 and 139
Hearing Date:	May 20, 2013 (Original Hearing - April 22, 2013)
Decision Due:	August 18, 2013 (Original Due Date - July 21, 2013)

This communication shall be supplemental to the Planning Department's original interdepartmental communication dated April 17, 2013. All of the information provided within the original interdepartmental communication remains within this amended communication, however, some of the previous information has been expanded upon, clarified and/or updated. There are also a couple of new points which have arisen from ongoing discussions at the previous Board of Selectmen hearing and/or Design Review Board meeting.

Attached are the legal ad, application, plan sheets, and interdepartmental review comments received to date. As of this date, comments have been received from the Town of Acton's Engineering Department, Sidewalk Committee, Water Supply District of Acton and Building Department. Upon review of the submitted documents and comments received to date and with the exception of the Planning Department's comments which follow in detail, it does not appear that any of the disciplines have significant issues or questions pertaining to the issuance of this Site Plan Special Permit. The comments and concerns provided by municipal disciplines (other than those from the Planning Department) could potentially be incorporated into a Decision as plan modifications and/or conditions. A full and complete review of building permit plans will be undertaken by the Building and Fire Departments to ensure full compliance with specific Building and Fire Code issues and concerns.

The application as currently submitted, proposes to demolish an existing building (previously a McDonald's Restaurant) and construct a new restaurant. The new structure would be occupied by Panera Bread, would be approximately 4,100 square foot in building footprint area, and would have ~~131~~ 129 total seats (99 seats inside the restaurant facility and ~~32~~ 30 outdoor seats in a proposed patio area). As per the Town of Acton Assessor's Office information, the entire subject site consists of approximately 6.39 acres (278,349 square feet). However, the subject Site Plan Special Permit pertains to a smaller "lease area" which is approximately 2.51 acres (109,336 square feet) in area. The width of the "lease area" is 108'-0" of frontage directly along Main Street (Route 27) and is located within the Kelley's Corner Zoning District.

The Site Plan and the Zoning Bylaw:

5.6.2 The following standards shall apply to all LOTS in the KC District:

5.6.2.1 The Site Plan Special Permit Granting Authority shall require sidewalks along the LOT'S FRONTAGE on a STREET or STREETS and walkways between BUILDING entrances and the nearest STREET or STREETS with minimal interruption by driveways. Parking lot aisles, and access and interior driveways do not count as walkways;

5/15/13 – Comment remains the same as previous.

4/17/13 - Although a sidewalk, approximately 6'-0" in width, currently exists, please proceed to Section 5.6.3 and 5.6.3.1 of the Bylaw which become applicable in this specific instance.

5.6.3 The following standards shall apply on all LOTS in the KC District where the FLOOR AREA RATIO exceeds 0.20:

5.6.3.1 The Sidewalk – A sidewalk shall be provided along the LOT'S FRONTAGE on a STREET or STREETS. The sidewalk shall be at least 10 feet wide. Sidewalks may be located wholly or partially within the STREET layout. The sidewalk shall be separated from the vehicular roadway with a landscaped buffer at least 10 feet wide, which shall consist of shade trees placed at 40-45 foot intervals and other landscaping or STREET design elements, and which may consist in part of on-STREET vehicular parking spaces.

5/15/13 – The drawings have been revised to move towards compliance with this comment. The existing sidewalk is proposed to be removed. A new 10’-0” wide landscape buffer area is proposed to be created, however, there are no shade trees or other landscaping or street design elements currently proposed. The revised landscape plan only calls for grass to be planted. While some grass could be planted, there must shade trees (perhaps Red Oaks to remain consistent with the proposed parking lot landscaped islands) included to be in compliance with the Bylaw. Based upon the frontage of the Applicant’s “lease area”, and the 40’-0” to 45’-0” interval spacing the Bylaw requires, it appears as though that at least 2 (perhaps 3) shade trees could be placed in the landscape buffer area immediately in front of the Applicant’s “lease area”. Additionally, another 2 (perhaps 3) shade trees could be placed within the landscape buffer area which is now proposed to be created between the existing access driveways into the property.

To ensure the long-term durability and to avoid potential issues when plowing snow, the sidewalk should be constructed of a concrete or stamped concrete material with any colouring agent embedded into the concrete mixture to ensure its longevity.

A jog will be required to connect the existing sidewalk with the new sidewalk to be built. The proposed jog, which would be approximately 10’-0” to 15’-0” in length is identified as only being 5’-0” wide. The proposed is satisfactory.

Due to the new sidewalk being created and located within private property, a Sidewalk Easement should be drafted and executed with the Town prior to any Certificate of Occupancy being approved or issued for the new Panera Bread Restaurant.

4/17/13 - As previously mentioned, an approximately 6’-0” wide bituminous concrete sidewalk does exist across the frontage of the subject property. However, based upon the nature of the subject Site Plan Special Permit application, this Bylaw requirement must be satisfied as part of the application. This Zoning Bylaw requirement is not something which the Special Permit Granting Authority has the power or option of waving. This Zoning Bylaw requirement has not been addressed.

5.6.3.4 BUILDING Design –

- a) At least 60 percent of the front side of a LOT facing a STREET, measured in percentage of linear feet of the LOT FRONTAGE, shall be occupied by BUILDINGS or by a pedestrian plaza that are located within 40 feet of the STREET sideline. A reduction of this requirement to 50 percent of the front side of a LOT may be allowed provided the Site Plan Special Permit Granting Authority finds that the alternative design features are consistent with Section 5.6.1 of this Bylaw.

5/15/13 – The revised plans have rotated the proposed building so that the longer façade faces Main Street (Route 27). The length of this façade is

approximately +/- 70'-0" which translates to approximately +/- 64.8%.
The revised layout is compliant with this bylaw requirement.

4/17/13 - The "lease area" frontage is identified as being 108'-0" which requires a minimum 64'-10" (60%) wide building(s) or pedestrian plaza to be located within the first 40'-0" of the property. The building, as currently proposed, is 54'-3½" in width (50.2%), which could be acceptable, should the Site Plan Special Permit Granting Authority find that the proposed is consistent with Section 5.6.1 of the Bylaw (copy of which is attached to this memo).

- b) BUILDINGS shall be of a design similar to the architecture in historic commercial centers of New England in terms of scale, massing, roof shape, spacing and exterior materials. Alternative designs may be allowed provided the Site Plan Special Permit Granting Authority finds the alternative design is consistent with Section 5.6.1 of the Bylaw.

5/15/13 – The revised design of the proposed building is significantly more in compliance with this requirement. The building as currently proposed is much more of a "timeless" design and more in keeping with traditional New England architecture. The revised building design is compliant with this zoning bylaw requirement.

4/17/13 - The building as currently proposed, does not comply with this requirement. However, as stated in the Zoning Bylaw, the Site Plan Special Permit Granting Authority has the ability to make a finding that the proposed building and design is consistent with Section 5.6.1 of the Bylaw (copy of which is attached to this memo).

- c) BUILDING facades facing STREETS or pedestrian plazas are also referred to herein as the BUILDING front(s) or BUILDING front facade(s). Such BUILDING fronts shall have a vertical orientation, meaning either that the BUILDING shall actually have a greater height than width, or that the facades and roof lines of the BUILDING are designed to reduce the massing and bulk so that it appears as a group of smaller masses with a distinct vertical orientation.

5/15/13 – Although the proposed building may not meet the exact dimensional requirements set forth, the revised design which incorporates the 9/12 minimum pitch gable roof design, DOES succeed in accomplishing and satisfying the general intention of this requirement. The revised building design is in compliance with the zoning bylaw requirement.

4/17/13 - The building as currently designed and proposed, does not comply with this requirement. The building as currently designed, is 54'-3½" in width, approximately 16'-0" in height to the flat roof and approximately 23'-11" in height to the top of the parapet. This is a Zoning Bylaw design

requirement, which in this instance, must be satisfied as part of the application. This Zoning Bylaw requirement is not something which the Special Permit Granting Authority has the power or option of waving. This Zoning Bylaw requirement has not been addressed.

- d) The BUILDING front facades shall be articulated to achieve a human scale and interest. The use of different textures, shadow lines, detailing and contrasting shapes is required. Not more than 50 feet of a BUILDING front shall be in the same vertical plane.

5/15/13 – The revised design of the building satisfies this requirement. Although the overall width of the proposed building is approximately +/- 70'-0", the front façade is broken up into 4 (four) different vertical planes. The revised design "pulls out" and "recesses" lengths/portions of the front façade, none of which come close to exceeding the maximum dimensional requirement set forth. The revised building design is in compliance with the zoning bylaw requirement.

4/17/13 - The building as currently designed and proposed, does not comply with this requirement. The building as currently designed, has an overall proposed width of 54'-3½". Although Staff does acknowledge that there is an approximately 2" offset at the location where the highest projection of the parapet is located, this is not sufficient to consider the design as having different and separate vertical planes. This is a Zoning Bylaw design requirement, which in this instance, must be satisfied as part of the application. This Zoning Bylaw requirement is not something which the Special Permit Granting Authority has the power or option of waving. This Zoning Bylaw requirement has not been addressed.

- e) The BUILDING front facade(s) shall be faced with materials used in historic New England architecture. Alternative materials may be used on the BUILDING front facade(s) provided that the Site Plan Special Permit Granting Authority finds the materials to be consistent with Section 5.6.1 of the Bylaw.

5/15/13 – The revised design of the proposed building is significantly more in compliance with this requirement. The building as currently proposed is much more of a "timeless" design and more in keeping with traditional New England architecture. The revised building design is compliant with this zoning bylaw requirement.

4/17/13 - The building as currently proposed, does not comply with this requirement. However, as stated in the Zoning Bylaw, the Site Plan Special Permit Granting Authority has the ability to make a finding that the proposed building and design is consistent with Section 5.6.1 of the Bylaw (copy of which is attached to this memo).

- f) On the BUILDING fronts, the ground floor shall be occupied, or designed to be available for occupancy, by Retail Stores; Restaurants; Hotel, Motel, Inn, Conference Center; Lodges or Clubs; Bed & Breakfast; Services; Commercial Entertainment; real estate agencies; insurance agencies; travel agencies; law offices; medical and dental offices; walk-in clinics; small equipment repair services; tailors; or photography studios.

5/15/13 – Comment remains the same.

4/17/13 - Ok. Requirement is complied with. The proposed building would be the future location of Panera Bread (restaurant use as classified under the Zoning Bylaw).

- g) The main business entrance to each ground floor business, identified by the larger doors, signs, canopy or similar means of highlighting, shall be from the BUILDING front.

5/15/13 – Comment remains the same.

4/17/13 - Ok. Requirement is complied with. As currently proposed, the main entrance into the restaurant is located at the southeast corner of the building with identical sets of doors providing direct access inside from either the south (parking lot) and east (Main Street a/k/a Route 27) sides of the building.

- h) Grocery retailers with a NET FLOOR AREA larger than 20,000 square feet may have a second main entrance in another location, for instance towards a parking lot in the rear or the side of a BUILDING.

5/15/13 – Comment remains the same.

4/17/13 - Ok. This requirement is not applicable in this instance. The proposed use is Panera Bread (restaurant use as classified under the Zoning Bylaw).

- i) Arcades and canopies shall not be considered part of the BUILDING. Arcades and canopies may not be located within 10 feet of the sideline of a STREET unless the Site Plan Special Permit Granting Authority finds that the reduction in setback to the sideline of the STREET is consistent with Section 5.6.1 of the Bylaw.

5/15/13 – Comment remains the same.

4/17/13 - Ok. This requirement is not applicable. There are no arcades or canopies proposed as part of the current application.

- j) The BUILDING front(s) shall contain windows covering at least 15 percent of the facade surface. Windows shall be highlighted with frames, lintels and sills or equivalent trim features. Windows and doors shall be arranged to give the facade a sense of balance and symmetry.

5/15/13 – The revised plans have rotated the proposed building so that the longer façade now faces Main Street (Route 27). The façade surface area of this new proposed front elevation is approximately +/- 1,778 square feet in area. Based upon the bylaw requirement of 15%, a minimum of approximately +/- 267 square feet would be required to be windows. The new proposed front elevation has approximately +/- 572.5 square feet of window area which translates to approximately +/- 32.2%. The revised building design is compliant with this bylaw requirement.

4/17/13 - There are no calculations provided with the current application submission to address this design requirement. Additionally, the current design of the proposed building does not satisfy the condition requiring “windows and doors shall be arranged to give the façade a sense of balance and symmetry”. This is a Zoning Bylaw design requirement, which in this instance, must be satisfied as part of the application. This Zoning Bylaw requirement is not something which the Special Permit Granting Authority has the power or option of waving. This Zoning Bylaw requirement has not been addressed.

- k) Except for ground level display windows, windows shall have a 2:1 ratio of height to width. Alternative window designs may be allowed provided the Site Plan Special Permit Granting Authority finds them to be consistent with Section 5.6.1 of the Bylaw and that they enhance one or more architectural features.

5/15/13 – Comment remains the same.

4/17/13 - Ok. This requirement is not applicable. The proposed structure is a single story building.

- l) On the ground level portion of the BUILDING front, the amount of windows in the facade surface shall be at least 20 percent but not larger than 80 percent. Ground floor display windows shall be framed on all sides by the surrounding wall. They shall be highlighted with frames, lintels and sills or equivalent trim features, or may instead be recessed into the wall or projected from the wall.

5/15/13 - The revised plans have rotated the proposed building so that the longer façade now faces Main Street (Route 27). The façade surface area of this new proposed front elevation is approximately +/- 1,778 square feet in area. Based upon the bylaw requirement of 15%, a minimum of approximately +/- 267 square feet would be required to be windows. The new proposed front elevation has approximately +/- 572.5 square feet of

window area which translates to approximately +/- 32.2%. The revised building design is compliant with this bylaw requirement.

4/17/13 - There are no calculations provided with the current application submission to address this design requirement. The building as currently designed and proposed, does not appear to satisfy this design requirement. This is a Zoning Bylaw design requirement, which in this instance, must be satisfied as part of the application. This Zoning Bylaw requirement is not something which the Special Permit Granting Authority has the power or option of waving. This Zoning Bylaw requirement has not been addressed.

m) Mirror windows and highly reflective surfaces shall not be allowed on the BUILDING fronts.

5/15/13 – The proposed building design complies with this design requirement. The revised plan calls for multiple window openings across the entire front façade which allow for visual interaction between people within the restaurant and those outdoors in public spaces.

4/17/13 - The proposed building plans as currently submitted do not indicate whether or not this requirement is satisfied or complied with. This information should be added to any future plans and be addressed prior to any approval.

n) Roofs shall be gabled with a minimum pitch of 9/12 (9” vertical for every 12” horizontal) and have overhanging eaves of at least one foot. Two or three story BUILDINGS, or two or three story portions of a BUILDING, may have a flat roof provided that the tops of the BUILDING front facades are treated with an articulated cornice, dormers, or other architectural treatment that appears an integral part of the BUILDING from all visible sides of the BUILDING.

5/15/13 – The revised building design complies with this zoning bylaw design requirement. One large main gabled roof spans the majority of the structure with multiple other smaller gabled roofs branching off and extending outwards.

4/17/13 - The building as currently proposed, does not comply with this requirement. The proposed structure is a single story building with a flat roof and an approximately 6’-3” high parapet around the majority of the building. The proposed parapet extends to an overall maximum height of approximately 23’-11” in the southeast corner of proposed structure. This is a Zoning Bylaw design requirement, which in this instance, must be satisfied as part of the application. This Zoning Bylaw requirement is not something which the Special Permit Granting Authority has the power or

option of waving. This Zoning Bylaw requirement has not been addressed.

- o) The main features of the architectural treatment of the BUILDING front facades, including the materials used, shall be continued around all sides of the BUILDING that are visible from a STREET or a pedestrian plaza. The Site Plan Special Permit Granting Authority may approve alternate treatment of side and rear BUILDING walls that is consistent with Section 5.6.1 of the Bylaw and preserves the architectural integrity of the BUILDING as a whole.

5/15/13 – Comment remains the same.

4/17/15 - Ok. Requirement is complied with. The proposed building as currently applied for, seems to comply with this design requirement.

- p) Garage doors or loading docks shall not be allowed in the BUILDING fronts.

5/15/13 – Comment remains the same.

4/17/13 - Ok. Requirement is complied with. The proposed building as currently applied for does not identify any garage doors to be installed, and there is an access door in the rear northwest corner of the building near the trash enclosure which would presumably be utilized for significantly sized deliveries.

- q) BUILDING service and loading areas shall incorporate effective techniques for visual and noise buffering from adjacent USES.

5/15/13 – Comment remains the same.

4/17/13 - As previously identified under the preceding requirement, significantly sized deliveries of foods, etc. for the proposed restaurant use which are being delivered to the rear back corner of the proposed building, would not result in adversely affecting adjacent properties. The closest adjacent use to the proposed restaurant is the Verizon building which is located directly on the southwest corner of the Massachusetts Avenue and Main Street (Route 27) intersection.

- r) Accessory STRUCTURES, air conditioning equipment, electric utility boxes, satellite dishes, trash receptacles and other ground level utilities shall be unobtrusive when viewed from the STREET and adjacent LOTS.

5/15/13 – The site plan indicates a trash enclosure to be constructed on the northeast corner of the proposed building. It is unclear the material which would be

utilized to construct this enclosure. The material proposed to construct the trash enclosure should be consistent with the material proposed for the main restaurant structure.

4/17/13 - Ok. The proposed building as currently applied for, a separate proposed trash enclosure and a proposed transformer seems to all comply with this design requirement at this time.

- s) Rooftop mechanical equipment shall be screened from public view by the use of architecturally compatible materials.

5/15/13 – The revised building design is proposing an area of the gabled roof be “cut out and recessed” on the back side of the building to create a flat portion of roof. This would provide an area where the mechanical equipment can be installed while remaining adequately screened from public view.

4/17/13 - The proposed building plans as currently submitted do not indicate whether or not this requirement is satisfied or complied with. The current design which incorporates a flat roof and an approximate 6’-3’ parapet surrounding the majority of the building would seem to provide for compliance with this requirement. However, based upon other previously identified design requirements which must be addressed, specifically the requirement of a 9/12 minimum pitched gable roof, it is unclear as to whether or not this requirement could be satisfied.

Other Planning Department comments:

- 5/15/13 - The revised drawings have now introduced two (2) dormers on the roof which faces Main Street (Route 27). While the introduction of the dormers is important to help break up the overall shear massing of the roof, the dormers as currently designed seem to be a little undersized and out of scale for the proposed project. The dormers could be doubled in width and the ridge of the gabled roof of said dormer would tie into and be inline and connect with the ridge line of the large main gabled roof.
- The currently proposed patio is screened and/or separated from public view and/or interaction with pedestrians by cedar wood “screens” (details of which are not provided in the current submission). The current design creates a physical barrier and provides a distinct sense of separation from the public sidewalk/space. This does not create and provide for a sense of walkable or a pedestrian friendly Kelley’s Corner.

5/15/13 – The revised plan reconfigures the overall use of the “cedar wood screens” to be installed. The revised outdoor patio calls for the cedar wood screens to be installed on the corners of the patio area to “bookend” and define/delineate the patio area.

- It would be beneficial to provide bike racks as part of the application to offer alternative modes of transportation.

5/15/13 – The revised site plan includes 3 bike racks to be located on the southwest corner of the new proposed structure.

- As identified in the Engineering Department's comments, the proposed use triggers the requirements for providing a traffic study/analysis. It would be beneficial to have the Applicant conduct a comprehensive traffic study for the entire Kelley's Corner area in the context of the existing conditions as well as projections (looking approximately 5 years out) with the currently proposed use open and conducting business. The study could address volumes of traffic in all directions, turning movements, bicycles, weekday volumes, weekend volumes, etc. The study could provide valuable current data/information to help guide future long-term Kelley's Corner planning objectives. The traffic study could also discuss and suggest possible mitigation measures. The applicant could also provide a monetary contribution which could be utilized for traffic mitigation measures within the Kelley's Corner area.

5/15/13 – No traffic study has been submitted as of this date.